

BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION
STATE OF NEBRASKA

Douglas D. Christensen)
Commissioner of Education)
301 Centennial Mall South - 6th Floor)
P.O. Box 94933)
Lincoln, NE 68509-4933)

Petitioner,)

vs.)

William Schernikau)
2200 Rock Creek Road)
Ceresco, NE 68017,)
Respondent.)

N.P.P.C. Case No. 00-5
Case No. 99031



FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION OF
THE COMMISSION

I. STATEMENT OF THE CASE

This case commenced before the Nebraska Professional Practices Commission, hereinafter referred to as the "Commission," with the filing of a Petition on March 2, 2000, by Douglas D. Christensen, Commissioner of Education, Department of Education, State of Nebraska, hereinafter referred to as "Petitioner." The Petition was filed against William Schernikau, hereinafter referred to as "Respondent." The Petitioner alleges certain acts of conduct by the Respondent in violation of Title 92, Nebraska administrative Code, Chapter 27, Sections 004.02D, 004.02H, 004.04E (all having an effective date: December 25, 1989), and Neb. Rev. Stat. Sec. 79-866 (Reissue 1996).

On March 2, 2000, the Petition, Notice, and a copy of Title 95, Nebraska Administrative Code, Chapter 1, were served upon the Respondent by certified mail, return receipt requested, together with a Notice of a Right to Submit Answer. On March 14, 2000, the Respondent, through his attorney, Chad M. Meisgeier, filed an Answer.

On March 16, 2000, Kathi Vontz, Clerk of the Commission, sent a notice of hearing to all parties. The Notice advised that a public hearing on the Petition and Answer would be held on the fifteenth day of April, 2000, in the State Board Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The Notice further advised that the hearing would be held before a designated hearing committee of the Commission

with Samuel Van Pelt serving as legal counsel to advise the Chair in the performance of his duties.

At the above time and place, the Petition came on for hearing before a Hearing Committee of the Commission consisting of Commissioners Vickie Anderson, Rose Mary Datus, John Garske, Kurt Harrison, Mimi Heintzman, Joe Johar, Joe Reinert, Linda Salazar, and Leann Widhalm. John Garske served as Chairperson of the hearing panel. The proceedings were reported by Carolyn Freeman of General Reporting Services, Lincoln, Nebraska. The Petitioner was present by Brian L. Halstead, his attorney and Certification Counsel. The Respondent appeared in person and through his attorney, Chad Meisgeier. Exhibits were received and witnesses testified. Thereafter, attorneys for both parties made their closing arguments. The Commission thereupon adjourned and deliberated. Accordingly, the Commission makes the following Findings of Fact, Conclusions of Law, and Recommendation to the State Board of Education.

II. FINDINGS OF FACT

1. The Petitioner, Douglas D. Christensen, is the Commissioner of Education for the State of Nebraska. The Respondent holds a lifetime Nebraska public schools teaching certificate, number ' -8148, Type 2, Rank A, Level 7, endorsed in Elementary Education K-8, English 7-12, and Music 7-12.

2. The Respondent was employed as an elementary teacher by the Lincoln Public Schools for many years until January 20, 2000. During 1999, while he was so employed by the Lincoln Public Schools, the Respondent made incorrect and exaggerated representations to Lincoln Public Schools officials regarding his physical limitations and disabilities resulting from a workplace accident. Said accident entitled the Respondent to certain compensation and benefits under the Nebraska Workman's Compensation Act.

3. Subsequent thereto, the Respondent settled his workman's compensation claim with the Lincoln Public Schools as a self-insured. Respondent also terminated his employment with the Lincoln Public Schools effective January 20, 2000, and subsequently settled any and all claims arising out of that termination.

III. DISCUSSION

The hearing panel was unanimous in concluding that the Petitioner had failed to sustain his burden of proving that the Respondent violated Neb. Rev. Stat. Section 79-866 (Reissue 1996), which states in part that for just cause, a teacher's certificate may be revoked or suspended for commission of an immoral act or commission of a felony. As discussed hereafter, to the extent that the hearing panel found that the Respondent violated a standard established pursuant to this section, the Commissioner sustained his burden.

Six members of the hearing panel found that the Petitioner sustained his burden of proving that the Respondent violated title 92, Nebraska Administrative Code, Chapter 27,

Section 004.02D (effective date: December 25, 1989), which states that an educator shall not make any fraudulent statement or fail to disclose a material fact for which the educator is responsible. Three members of the hearing panel felt that the Petitioner had not sustained his burden. The majority of the hearing panel felt that the evidence sustaining the Petitioner's burden was the Respondent's statement regarding the disability in his arms, limitations in mobility as stated to Lincoln Public School officials and a medical doctor examining him in connection with his workman's compensation claim, in contrast to conduct by the Respondent revealed in a videotape received in evidence as Exhibits 15, 16, and 17.

None of the hearing panel felt that the Petitioner had sustained his burden of proving that the respondent violated Title 92, Nebraska administrative Code, chapter 27, Section 004.02H, which states that an educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of his professional duties. The panel members felt that the conduct referred to in the previous paragraph was not in the performance of the Respondent's professional duties. None of the hearing panel members felt that the Petitioner had proven by a preponderance of the evidence a violation of title 92, Nebraska Administrative Code, Chapter 27, Section 004.04E (same effective date), which states that the educator shall not commit any act of moral turpitude nor commit any felony under the laws of the United States or any state. There was no evidence of the commission of any felonies. The hearing panel felt that the Respondent's conduct described above was not an act of moral turpitude or an immoral act.

A majority of five panel members concluded that a public reprimand of the Respondent for his conduct would be the most appropriate sanction. A minority of four panel members concluded that a more severe penalty should be imposed.

IV. CONCLUSIONS OF LAW

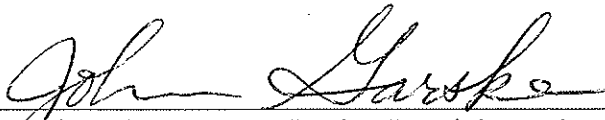
1. The Commission has jurisdiction in this case and all proceedings have been in accordance with applicable Constitutional, Statutory, and Regulatory Requirements.
2. The Petitioner has proven that the Respondent made a fraudulent statement and failed to disclose material facts for which he was responsible to the Lincoln Public Schools in connection with a workman's compensation claim and the extent of his injuries thereunder, in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02D (effective date: December 25, 1989).

V. RECOMMENDATION

Therefore, the Commission respectfully orders that William Schernikau be, and he is hereby issued a public reprimand for his conduct following a work-related injury on March 18,

1998, and for certain claims and statements that he made regarding the extent of his injuries and disabilities.

Dated this 27th day of April, 2000.

x 

John Garske, Chairperson, Hearing Panel Committee
Nebraska Professional Practices Commission

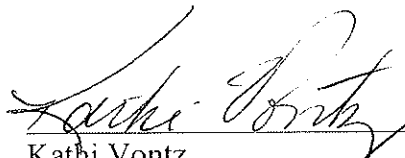
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order of the Commission for Case No. 00-5 has been served upon Respondent, William Schernikau, and Chad Meisgeier, attorney for the Respondent, by U. S. Mail, postage prepaid, and hand delivered to Brian L. Halstead on this 4th day of May, 2000, at the following addresses.

William Schernikau
Respondent
2200 Rock Creek Road
Ceresco, NE 68017

Brian L. Halstead
Attorney for Petitioner
301 Centennial Mall South
Lincoln, NE 68509

Chad Meisgeier
Attorney for Respondent
605 South 14th St., #100
Lincoln, NE 68508-2708


Kathi Vontz
Clerk of the Commission